IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.325 OF 2006

Anil B. Ved Mehta & another Petitioners

versus

Sagar Sanjog Co-op. Housing Society and others Respondents

Mr.A.Y.Sakhare, Sr.Counsel with Mr.L.M.Acharya for petitioners.

Ms.K.C.Nichani with N.J.Asrani for respondent no.1

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th February 2006

PC :

1. The petitioners have challenged an order passed by the Maharashtra State Co-operative Appellate Court in Appeal No.49 of 2005. By the order delivered on 19/21st November 2005 the appeal preferred by the first respondent is allowed. The Trial Court's order dated 20th February 2005 is set aside. The petitioners who are respondents 2 and 3, are restrained from making any permanent additions or alterations in the bungalow premises (Kanta Villa) located in

the compound of the appellant society till decision of the dispute. The further injunction is restraining the petitioners from using this bungalow for commercial purpose till the decision of Dispute C.C.IV/618/2004 which is pending in the Co-operative Court.

2. After the matter was argued for some time Shri Sakhare - learned Senior Counsel for the petitioners had agreed on the last occasion that an undertaking would be placed by the petitioners on affidavit before this Court incorporating therein a specific statement that they would carry out only repairs and renovations to the abovementioned bungalow premises. They would keep this bungalow either vacant or use it for petitioner's occupation. They would also not create any third party rights in respect of the bungalow premises which admeasure 2481 sq. ft.. Similarly, they declare, confirm and undertake that they would not claim ownership rights insofar as the open space of 3,000 sq.ft. surrounding this bungalow. This undertaking was to be filed without prejudice to the rights and contentions of the petitioners.

3. Today, this matter was placed for orders and

Shri Acharaya appearing for petitioners has tendered an affidavit-cum-undertaking incorporating the above said statements and undertakings. Same is taken on record and marked "X" for identification. In the light of this undertaking, this petition does not survive. It is disposed of as not pressed.

4. The undertaking should also be placed on record of the Co-operative Court. The order of the Co-operative Appellate Court is modified only to the extent that the petitioners would repair and renovate the bungalow premises. They will either keep the same vacant or use it only as their residence.

5. It is clarified that all observations in the order under challenge are prima facie and shall not influence the Co-operative Court while trying the Dispute. The said dispute be disposed of on it’s own merits and in accordance with law as expeditiously as possible and in any event by 30th September 2006.

(S.C.DHARMADHIKARI, J.)